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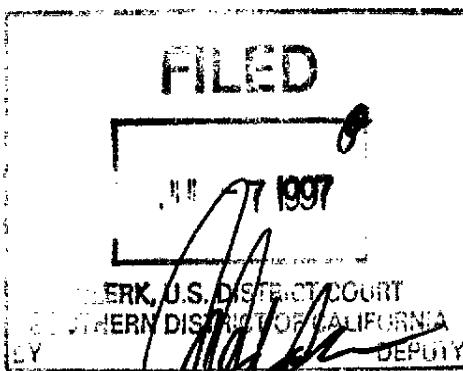
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\*665\*

\*CRMEMSUP.\*

1 MARIO G. CONTE  
2 California Bar No. 093211  
2 FEDERAL DEFENDERS OF SAN DIEGO, INC.  
2 225 Broadway, Suite 900  
3 San Diego, California 92101-5008  
4 Telephone: (619) 234-8467

5 Attorneys for Defendant Spilotro



8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 (HON. WILLIAM B. ENRIGHT)

11 UNITED STATES OF AMERICA, ) Criminal No. 92CR0026-E

12 Plaintiff, ) **STATEMENT OF FACTS AND**  
13 ) **POINTS AND AUTHORITIES**  
14 v. ) **IN SUPPORT OF**  
15 JOHN P. SPILOTRO (6), ) **DEFENDANT'S MOTION**

16 Defendant. )

17 I.

18 **STATEMENT OF FACTS**

19 On 12 January 1993, the government filed a one count  
20 superseding information charging John Paul Spilotro with a violation of  
21 18 U.S.C. § 4-misprision of a felony (extortion). On the same date, Mr.  
22 Spilotro pled guilty to the charge in connection with the attempted  
23 extortion of Joseph Pignatello by other defendants in this case. Mr.  
24 Spilotro admitted that he knew that attempts were being made to extort  
25 Mr. Pignatello, but Mr. Spilotro did not report these attempts to the  
26 government.

27 On 5 April 1993, this Court placed Mr. Spilotro on five years  
28 probation with the first six months to be served in home detention.

1 The genesis of the extortion attempt of Joseph Pignatello  
2 concerned monies that others believed he owed to Anthony Spilotro, the  
3 late brother of John Spilotro. In fact, no money was owed.

4 As a result of gambling debts, Mr. Pignatello owed Anthony  
5 Spilotro approximately \$100,000. In 1983, Mr. Pignatello borrowed  
6 approximately \$110,000 from Attorney Neal Beller in Las Vegas, Nevada, in  
7 order to pay off the loan. Anthony Spilotro was given \$55,000 of the  
8 \$110,000 that was borrowed from Attorney Beller. Subsequently, Mr.  
9 Pignatello gave John Spilotro \$24,000 and \$20,000 on two occasions in  
10 order to satisfy the debt. In a telephone conversation with Mr. Beller,  
11 it was confirmed that Mr. Pignatello had, in fact, borrowed \$110,000 from  
12 him and had ultimately repaid the entire sum.

13                   In 1988, attempts were made to collect this sum of money from  
14 Mr. Pignatello, when, in fact, it had already been repaid. When John  
15 Spilotro found out about these attempts to collect the money, he  
16 confirmed that no money was owed to his late brother. Indeed, in an  
17 attempt to assist Mr. Pignatello, John Spilotro met with other  
18 individuals at a coffee shop in Las Vegas and conveyed the fact that Mr.  
19 Pignatello did not owe Anthony Spilotro any money. This fact was  
20 corroborated in a tape-recorded conversation from the Metropolitan  
21 Correctional Center between Joseph Pignatello and another individual  
22 called John. In their discussion, Joseph Pignatello states how John  
23 Spilotro met individuals in a coffee shop and told them Mr. Pignatello  
24 did not owe any money to Anthony Spilotro.

III

## ARGUMENT

27 Mr. Spilotro moves this court for an early termination of his  
28 probation based upon his exemplary performance. On July 5, 1997, he will

1 have already served four years and three months of probation without any  
2 violations or other problems.

3       A.     **Early Termination of Probation is Authorized Pursuant to**  
4                    **18 U.S.C. § 3564(c) and Fed. R. Crim. P. 32.1(b)**

5               Both 18 U.S.C. § 3564(c) and Fed. R. Crim. P. 32.1(b)  
6 contemplate and allow for the early termination of probation. Section  
7 3564(c) states in pertinent part:

8               (c) **Early termination.** The court, after  
9 considering the factors set forth in section  
10 3553(a) to the extent that they are  
11 applicable, may, pursuant to the provisions of  
12 the Federal Rules of Criminal Procedure  
13 relating to the modification of probation,  
14 terminate a term of probation previously  
15 ordered and discharge the defendant at any  
16 time in the case of a misdemeanor or an  
17 infraction or at any time after the expiration  
18 of one year of probation in the case of a  
19 felony, if it is satisfied that such action is  
20 warranted by the conduct of the defendant and  
21 the interest of justice.

22               Federal Rule of Criminal Procedure 32.1(b) sets out the  
23 procedure to be followed when either side seeks a modification of a  
24 probationary term. It states in pertinent part:

25               (b) **Modification of Probation or Supervised**  
26                   **Release.**

27               A hearing and assistance of counsel are  
28 required before the terms or conditions of  
1 probation or supervised release can be  
2 modified, unless the relief to be granted to  
3 the person on probation or supervised release  
4 upon the person's request or the court's own  
5 motion is favorable to the person, and the  
6 attorney for the government, after having been  
7 given notice of the proposed relief and a  
8 reasonable opportunity to object, has not  
9 objected. An extension of the term of  
10 probation or supervised release is not  
11 favorable to the person for purposes of this  
12 rule.

13               //

1           Therefore, in a case like this, where the defendant is seeking  
2 early termination of his probation, the court may grant the request  
3 without a hearing, if government counsel does not object.

4           **B. The Statutory Factors In 18 U.S.C. § 3553(a) Weigh In  
5           Favor of An Early Termination Of Mr. Spilotro's  
6           Probation.**

7           The early termination statute, 18 U.S.C. § 3564(c) directs the  
8 court to examine the section 3553(a) factors in determining whether  
9 probation should be terminated. Those factors include the nature and  
10 characteristics of the offense, the defendant's history and  
11 the offense, the need for deterrence, the need to protect the public from  
12 future crimes, the need to give the defendant training or treatment, the  
13 applicable Guidelines, the need to avoid unwarranted sentencing  
14 disparities among similarly situated defendants, and the need to provide  
15 restitution to any victims.

16           1. Nature of offense

17           In this case, Mr. Spilotro pleaded guilty to misprison of  
18 felony, 18 U.S.C. § 4, a Class D felony. His plea was based on the fact  
19 that he did not report extortion attempts on Joseph Pignatello by Chris  
20 Petti. Indeed, John Spilotro attempted to intercede on Joseph  
21 Pignatello's behalf and was informed by Petti that his efforts were  
22 "fool-hearty and all-advised." See PSR at 4. Ultimately, believing that  
23 Joseph Pignatello had spread rumors about Mr. Spilotro's brother,  
24 Anthony, Mr. Spilotro disassociated himself from Mr. Pignatello. There  
25 was no evidence that Mr. Spilotro had ever directly extorted Mr.  
26 Pignatello. Rather, his plea was based on inaction rather than  
27 affirmative action.

28 //

1           2. Defendant's history

2           Mr. Spilotro does not have any prior criminal history, other  
3 than the instant offense. He is currently 56 years old. He has been  
4 married for over thirty-four years to Arlene Spilotro and they have three  
5 children from this union. John, age 33, an attorney in Las Vegas and  
6 married with two children; Joseph, age 29, a Laboratory Scientists at St.  
7 Rose's in Las Vegas, and married; Stephanie, age 26, a recent graduate of  
8 the University of Oklahoma and about to begin graduate school in  
9 educational psychology at the University of Nevada, Las Vegas.

10          3. The Need For the Sentence to Reflect The Seriousness of  
11           The Offense, Afford Deterrence, Protect The Public, and  
12           Provide Mr. Spilotro With Training or Treatment Has Been  
13           Accomplished.

14          The probationary sentence imposed on Mr. Spilotro took into  
15 account the offense, his characteristics and has provided "just  
16 punishment" (8 U.S.C. § 3553(a)(2)(A)), for the offense.

17          This court fashioned a sentence which confined Mr. Spilotro to  
18 his home for six months, and then placed him under supervision for the  
19 past four years and three months. Because of his complete lack of  
20 criminal involvement for over fifty years of his life, there is no reason  
21 to believe that Mr. Spilotro will engage in any further criminal conduct,  
22 and thus deterrence, (18 U.S.C. § 3553(a)(2)(B)), if any is warranted,  
23 has been achieved. His performance on probation reflects this, and amply  
24 demonstrates why the public needs no further protection (18 U.S.C. §  
25 3553(a)(2)(C)), from Mr. Spilotro. His work at the American Cancer  
26 Society is certainly symbolic of his value to the public rather than any  
27 indicator of their need for protection from further crimes by Mr.  
28 Spilotro. See Exhibits A, B, and C attached. Finally, Mr. Spilotro  
requires no educational or vocational training, medical care or other

1 correctional treatment. 18 U.S.C. § 3553(a)(2)(D). There is no current  
2 probationary condition that even requires Mr. Spilotro to seek out an  
3 education or vocational training, and he is not in need of any medical  
4 care or other correctional treatment.

5       4. The Sentence.

6       This court has already considered the appropriate guidelines  
7 and the need to avoid unwarranted sentencing disparities. 18 U.S.C. §  
8 3553(a)(4)(A), (6). The sentence basically followed the PSR's  
9 recommendation of five years probation with four months of community  
10 confinement. However, there is nothing inappropriate in this court  
11 reviewing Mr. Spilotro's situation at this time to see if any further  
12 probationary supervision is necessary given all of the factors of 18  
13 U.S.C. § 3553(a). This is why Fed. R. Crim. P. 32.1(b) provides that  
14 "[p]robation conditions should be subject to modification, for the  
15 sentencing court must be able to respond to changes in the probationer's  
16 circumstances as well as new ideas and method of rehabilitation."  
17 Advisory Committee Notes; See Generally American Bar Association  
18 Standards Relating to Probation § 3.3.

19       Further supervision of Mr. Spilotro until his termination of  
20 probation in April 1998 would accomplish no more than what has already  
21 been accomplished. Mr. Spilotro has performed so well on probation that  
22 each month he is only required to send in a form attaching his pay stub  
23 from AMS Legal Services, the hours he worked for the American Cancer  
24 Society, the total dollar amount in his bank account, and the family's  
25 monthly expenses. An early termination of his probation would free up  
26 probationary resources for use on other individuals who require them.

27       Finally, there is no need to provide any restitution to any  
28 victims in this case. 18 U.S.C. § 3553(a)(7).

C. The United States Already Has Achieved the Goals of Probation in Mr. Spilotro's Case.

3 The goal of probation is to monitor a defendant's behavior to  
4 make sure that he does not commit any new crimes, abides by the  
5 conditions of probation, and presents no future problem. Mr. Spilotro  
6 has not been involved in any new additional criminal conduct and has  
7 complied with all of the conditions of probation imposed by the Court.  
8 All of the goals have been achieved.

## CONCLUSION

11 For the foregoing reasons, Mr. Spilotro respectfully requests  
12 that this Court grant this motion.

Respectfully submitted,

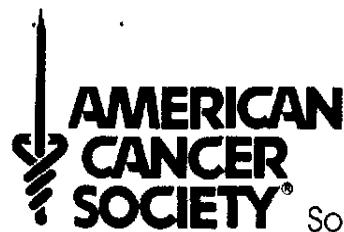
15 | Dated: July 7, 1997

~~MARIO G. CONTE~~

Federal Defenders of San Diego, Inc.  
Attorneys for Defendant Spilotro

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# **EXHIBIT A**



Southwest Division, Inc.

May 7, 1997

Dear Judge Enright:

This letter is written on behalf of John Spilotro, volunteer for the American Cancer Society, Las Vegas Region. Mr. Spilotro has served as a volunteer for nearly three years. As Program Director I oversee statewide program activity in tobacco control and coordinate skin cancer education programs for the Las Vegas community. Mr. Spilotro has played a key role in these two areas of cancer control.

The American Cancer Society host a variety of tobacco control programs including smoking cessation classes, one to one counseling to those wanting to quit, as well as free educational materials to teachers grades Preschool through 12th. In addition, we offer worksite education, assisting companies on how to develop a no smoking policy and employee smoking cessation programs. Also, we have volunteer speakers and trainers ready to help community organizations.

Mr. Spilotro is our in-house one to one cessation counselor. He assist smokers who are attempting to quit or are on the brink of starting, after refraining from smoking for a substantial period of time. Mr. Spilotro understands the smokers addiction to nicotine and can ease the smoker from lighting up a cigarette. Studies have shown that one to one counseling is more effective than a cessation program. Smokers are looking for immediate assistance to help them cope with cravings.

When teachers need ACS educational materials, Mr. Spilotro is the designated contact person to insure that age appropriate materials are given to enhance their tobacco lesson plan.

Annually, ACS in conjunction with Las Vegas dermatologists, provide free skin cancer education and screening to the public. Each year we screen approximately 500 people. Mr. Spilotro has been instrumental to the success of this program which starts in May and runs until August. He sets up the educational and screening rooms the day prior to the program. The day of the program he greets each participant, insures each participant completes a patient release form, shows a short educational video on skin cancer and answers their questions. Finally, he assist the physician by placing participants into the screening rooms. Participants who are diagnosed with a melanoma receive a follow up call from Mr. Spilotro. He works with each participant in insuring they make an appointment with a physician.

Mr. Spilotro is the most dedicated volunteer that I have met during my twelve years tenure with the American Cancer Society. He takes it upon himself to learn about cancer and to address the needs of the public. His commitment to the Society surpasses any expectations I could have for a volunteer. The Society would be lost without him and his knowledge on cancer. In a nonprofit agency it is rare to find a lay volunteer who is as competent and sincere as Mr. Spilotro. He is definitely one of a kind.

Sincerely,

A handwritten signature in black ink that reads "Mandy A. Canales".

Mandy A. Canales  
Program Director

# **EXHIBIT B**



May 2, 1997

Dear Judge Enright:

I have been associated with Mr. John Spilotro during my tenure with the American Cancer Society. During the past thirty-eight months that we have worked together, I can honestly say that John is the most dedicated and proficient volunteer that I have ever run across. He consistently exceeds what would be expected of any volunteer with our organization. When he came on board with our organization he agreed to act as a concerned, empathetic, and informed contact person for callers to the American Cancer Society's General Cancer Services Program. He would assess the needs of patients, family members, and friends who call, and seek appropriate resources, information, and guidance referrals not only to services that our organization provided as well as other agencies or sources in the community. Since that time, John has stepped up at every request to assist in program and special event activities that fall outside of the scope of his original involvement.

John is a very pleasant and thoughtful person, and I would personally attest to his integrity as well as his genuine interest in the patients he assists on a daily basis. John has become such a proven asset to our organization, that patients and their families will ask to be referred to him specifically. He not only provides the patients with the expertise they so greatly desire when they have a positive diagnosis of cancer, but manages to bring a smile to their faces amiss their personal tragedies. It is because of his dedication to the patients in our community that John was the recipient of our statewide Quality of Life Award which is given in recognition of exemplary volunteer achievement that enriches the quality of life of people with cancer and their families.

John has come to be not only a dear friend to me, but truly my "left hand man". When I travel for business, he is always willing to pick up the slack and put in the extra time needed to keep the operation running smoothly. He has also assumed the position as our General Cancer Services Team Leader. By assuming this position, he works with incoming volunteers on initial trainings, recertification and ongoing involvement with the program. John has been asked on several occasions to travel throughout the region to discuss not only his involvement with the organization but his concerns on the way our programs are administered to the public. He has been reluctant to extend his traveling boundaries outside of the city limits due to the conditions of his parole. It is under these constraints that he normally requests that someone take his place, unfortunately less qualified to give an accurate account of activity and suggestions for improvement.

Words can not begin to give justice to all that John means to our organization, and my department specifically.

Sincerely,

A handwritten signature in black ink that reads "Jeanette Rowland".

Jeanette Rowland  
Program Manager  
General Cancer Services/Cancer Information Referral

# **EXHIBIT C**

**JESSICA SCULTHORPE  
1872 LONGMEADOW  
HENDERSON NV 89015  
702-566-7099**

April 20, 1997

The Honorable Judge Enright

RE: John Spilotro

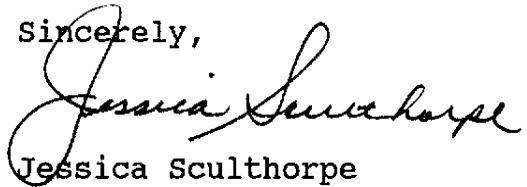
Dear Judge Enright:

I am writing to you on behalf of Mr. John Spilotro. I have had the pleasure to know John for several years now. Not only is he a true friend, but a caring individual. It shows not only with his friends, but also with his family. He never fails to take the time to show someone how much he loves and cares for them.

John spends time volunteering within the community. He is a volunteer for the American Cancer Society and helps people deal with the realization of this very nasty and oft time deadly disease. I have also had the opportunity to spend time volunteering at the Senior Center with John and his wife Arleen. They both care about what they are doing there and it shows in the way they treat and listen to the seniors around them. It takes a very special person to do the type of work John does and he is just that...SPECIAL.

I trust John with my family, my money, my home and my life.

Sincerely,



Jessica Sculthorpe